

REMARKS

Claims 1-26 were in the application as last examined. By the present amendments, claims 1, 2, 15, 16 and 21 are amended. No new matter is added by the amendments. Further examination and consideration is respectfully presented in view of the foregoing amendments and the following remarks.

Rejections under 35 U.S.C. § 102

Claims 17 and 9-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by US. Patent Application Publication No. 2002/0006782 to Kim. The rejections are respectfully traversed.

The claimed invention is not anticipated under §102 unless each and every element of the claimed invention is found in the prior art. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986).

Kim discloses a system for notifying a caller of confirmation of a voice or text message. A called mobile station (MS) "B" notifies a calling MS "A" (see para. [0034]) that it has received a voice or text message. In the disclosed mechanism for notifying a calling MS "A" whether a voice or text message has been played by the called MS "B", the called person must enter key data related to the confirmation of a text message (para. [0043]) or perform a normal procedure for confirming a received voice message (presumably taking some affirmative action (paras. [0013] and [0049])). Thus, the mechanism cannot be construed as "automatic."

In the present invention, a key feature is the determination of a status of a called party, without the called party necessarily knowing, or having to inform the calling party, of the enquiry. In all of the claims, a status response message is transmitted *automatically*, without any input from the called party. Because this feature is not shown in Kim, the reference does not anticipate the claims.

Further, Kim neither teaches nor suggests a mechanism whereby this advantage can be achieved. Thus, Kim does not render the claims obvious under 35 U.S.C. §103.

Rejection under 35 U.S.C. § 103(a)

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim, wherein the Examiner takes official notice that identifying said status enquiry message as being a status enquiry in a header portion of said short message service message is well known in the art. The rejection is respectfully traversed.

The Examiner cites to col. 7, lines 57-62 of U.S. Patent No. 6,636,521 to Giulianelli to support his assertion of official notice that the "fact" of identifying the status enquiry message as being a status enquiry in a header portion of the short message service message is presumably capable of *instant and unquestionable demonstration* as being well-known (MPEP §2144.03). But the cited reference states that the header portion contains only the command name, an access ID (if used) and any other information needed to route the message (Col. 7, lines 47-50). That is far cry from suggesting that a status enquiry identification be extracted from a header portion. Assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

Since Applicant has pointed out the deficiency in the Examiner's assertion, the Examiner is required to provide documentary evidence to support the rejection. (37 CFR 1.104(c)(2), MPEP §2144.03).

Moreover, inasmuch as claim 8 depends indirectly from claim 1, it is patentable over the cited references for the same reasons that claim 1 is patentable.

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Examiner: David Nguyen

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Conclusion

Should a Notice of Allowance not be immediately forthcoming, Applicant respectfully requests telephonic notice of such and the courtesy of an immediate second Office Action.

Any questions concerning the foregoing or any arrangements for an interview may be directed to the undersigned at 616-742-3513 (jeb@mcgarrybair.com).

Respectfully submitted,

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Date: 14 December 2004By: 

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